

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI
JEANNE HICKS, Clerk
B. Chamberlain
Deputy

THE STATE OF ARIZONA,)
)
Plaintiff,)
)
vs.)
)
STEVEN CARROLL DEMOCKER,)
)
Defendant.)
)

No. CR 2008-1339

BEFORE: THE HONORABLE THOMAS B. LINDBERG
JUDGE OF THE SUPERIOR COURT
DIVISION SIX
YAVAPAI COUNTY, ARIZONA

PRESCOTT, ARIZONA
TUESDAY, MARCH 10, 2009
10:53 A.M.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

HEARING ON MOTIONS

ROXANNE E. TARN, CR
Certified Court Reporter
Certificate No. 50808

MARCH 10, 2009
10:53 A.M.

HEARING ON MOTIONS

APPEARANCES:

FOR THE STATE: MR. MARK AINLEY.

FOR THE DEFENDANT: MR. JOHN SEARS.

THE COURT: This is State versus Steven Carroll DeMocker, CR 2008-1339. Mr. DeMocker is present in custody. Mr. Sears is here representing him. Mr. Ainley is here for the County Attorney's office representing the State.

And we are set on two matters this morning, motion for re-examination of conditions of release, and also defendant's request for extension for filing a new motion for finding probable cause.

Mr. Ainley.

MR. AINLEY: Judge, if I can for just a second, I would like to hijack us and take us in a different direction.

I am just giving a copy of this motion for release of divorce records to Mr. Sears. Back in February, we issued a subpoena duces tecum to the office of Bob Fruge. Mr. Fruge responded to our subpoena duces tecum and advised us that after consulting with the state bar, they said we should get a court order for the release of the documents. Mr. Fruge has indicated he is willing to give us

1 the documents, but requires a Court order first.

2 THE COURT: Mr. Sears, do you have objections
3 to that? I don't know what your position is.

4 MR. SEARS: I don't know. We received a copy
5 of a similar subpoena. We didn't receive a copy of that
6 particular subpoena, but we found out in other ways that the
7 subpoena had been issued, because there was a similar
8 subpoena issued for Anna Young's records, and, of course,
9 that is different because her client is ready, willing and
10 able to waive any applicable privilege.

11 I am a little reluctant to say I have no
12 objection to a motion that just says, please give us a court
13 order without any authority for that proposition from either
14 the State or Mr. Fruge or the state bar ethics counsel as to
15 why it is appropriate for the Court to do that.

16 I think there are a couple of competing
17 issues that I can think of regarding the privilege and
18 whether the privilege -- I hate to say this -- but died with
19 Miss Kennedy, or whether there was still some privilege that
20 is assertible by her estate, for example, and I don't know
21 the answer to that, and I have not been asked to weigh in on
22 that, but --

23 THE COURT: So you would like your response
24 time is what you are telling me?

25 MR. SEARS: I think so. I think so.

1 It may well be, and if I can come to a
2 quick answer that is consistent with what Mr. Fruge is
3 telling the State and advising the Court, then I will do that
4 right away. But I would like to take a look to see whether
5 or not there is a privilege that could be asserted by Katie
6 DeMocker on behalf of the estate.

7 THE COURT: Obviously, you, on behalf of
8 Steven DeMocker, don't necessarily have standing to insist
9 upon the rights of somebody else, but I will accept a
10 briefing on the issue from you as an interested party and
11 friend of the Court. So I will not sign this today, but I
12 will give you until the 20th to file a response.

13 MR. SEARS: Thank you, your Honor.

14 THE COURT: Thank you.

15 Mr. Ainley, is this the original?

16 MR. AINLEY: Yes, sir, it is.

17 THE COURT: I will direct the clerk to file
18 stamp that and accept it for filing today in court.

19 MR. AINLEY: Second thing, Judge.

20 On January 6, 2009, Mr. Sears filed a
21 notice of filing of the defendant's passport. It is the
22 passport that was received -- the duplicate passport that you
23 heard testimony concerning. The State would like to get a
24 copy of that passport, so I have prepared an order for
25 unsealing of the passport, copying of the passport by the

1 clerk's office, and supplying it to the sheriff's office, and
2 re-sealing the passport.

3 THE COURT: Objections?

4 MR. SEARS: No.

5 THE COURT: I will sign that order, absent any
6 objection. And I will direct the clerk to accept that for
7 filing, as well, today.

8 MR. AINLEY: That is all I have. I will let
9 Mr. Sears redirect us back to where we should have been.

10 THE COURT: Mr. Sears.

11 MR. SEARS: Could I take us down one more exit
12 before we get back on the freeway?

13 THE COURT: Okay.

14 MR. SEARS: Judge, I had filed a motion last
15 week to extend the time for the filing of the motion for new
16 finding of probable cause. The background behind that was
17 that last Monday, a week ago yesterday, I ran into Mr. Ainley
18 in your courtroom, and asked him if he would oppose an
19 extension. He asked me how long. I hadn't really thought
20 about it. I said two weeks. He said that would be fine. I
21 got back and circulated that information among the defense
22 team, particularly those people responsible for doing a lot
23 of the drafting work on that. And they asked, based on their
24 own schedules and travel schedules out of state, if we might
25 get one additional week to April 1.

1 I sent Mr. Ainley an e-mail. I got a
2 message back saying Mr. Ainley would prefer we stick to our
3 original agreement, which was an extension for two weeks or
4 until the 24th of March.

5 I don't know if the Court has seen or
6 read the transcript. It is 154 pages. There are four
7 witnesses in this presentation. There is some different
8 information, some of the same information. It requires a
9 great deal of work, and that, coupled with the schedule of
10 the attorneys, investigators that are working on this, make a
11 two-week extension problematic. We can be sure that we would
12 have a motion filed on or before April 1, if we could have
13 that period of time.

14 I don't mean to embarrass or show up
15 Mr. Ainley. When he asked me how long, I was not fully
16 informed. I said two weeks. If I had had a little more
17 presence, I probably would have said let me get back to you
18 on that, and that is where we are.

19 I would ask that the Court grant us an
20 extension of time to and including April 1 to file this
21 motion.

22 THE COURT: That's not down another exit.
23 That is one of the things that was on schedule for today, but
24 I appreciate that.

25 Mr. Ainley.

1 MR. AINLEY: Judge, my concern was simply that
2 Mr. Sears told me at that point in time that a decision
3 hadn't been made yet as to whether a motion was going to be
4 filed. I thought two weeks was plenty of time to -- well,
5 the 25 days plus another two weeks was plenty of time to have
6 gone through this record.

7 Defense counsel sent the State -- I think
8 it was a four or five page list of things that the defense
9 wanted the State to present during the grand jury
10 presentation, and the State did its best to comply with that.
11 When you ask for five pages of material, you can't complain
12 when the transcript is a hundred or 255 pages long, because
13 it is going to take a while to present the information that
14 they requested.

15 So I thought the original 25 days plus
16 two weeks was reasonable.

17 THE COURT: Does that take us to March 24?

18 MR. AINLEY: It does.

19 THE COURT: So you are willing to stipulate to
20 an extension through March 24, but not to April 1st?

21 MR. AINLEY: Yes, sir.

22 THE COURT: Mr. Sears, anything else?

23 MR. SEARS: Your Honor, we are by no means
24 complaining about the length of the presentation. We are
25 simply noting that the parsing of this presentation, in view

1 of the Court's detailed rulings regarding the first motion
2 for new finding, will take additional time. There is much
3 more detailed evidence about some of the things that the
4 Court was concerned about the first time.

5 We continue to get disclosure from the
6 State as recently as the end of last week in this case. It
7 is, obviously, an on-going process. And the particular
8 concern I have is that one of my co-counsel, who would be the
9 principal drafter of this, is going to be out of state on
10 another case one of the two weeks that I had asked for. So
11 what I am asking for is a net two weeks, that we give her the
12 full two weeks to do this.

13 We had made the decision, just for the
14 State's edification and the Court's edification, we are going
15 to file the motion. We are past that point now, but we do
16 need the extra time to do all the work necessary.

17 It is more complex than the first case,
18 because we have to not only review it as a whole, we have to
19 go back and look at how the State responded, if at all, to
20 the previous orders of the Court regarding certain matters.
21 And also the Trebus letter that we sent is actually eight
22 pages long.

23 There is a considerable amount of
24 information that we think is important in this case.

25 THE COURT: I will grant the extension only

1 through the 24th, but I will sign the order today that does
2 grant that extension, which I will direct the clerk to file.

3 MR. SEARS: Thank you.

4 THE COURT: Moving back onto the main issue of
5 today's hearing, motion for re-examination of conditions of
6 release.

7 Mr. Sears.

8 MR. SEARS: Thank you.

9 Your Honor, we filed a motion sometime
10 after the Court's order of January 22nd finding that the
11 defendant was bondable and setting bond in that matter in the
12 amount of two-and-a-half million dollars, asking for an
13 opportunity pursuant to Rule 7.4(b) of the rules of criminal
14 procedure to provide the Court with additional material,
15 information and evidence, which the Court, we believe, did
16 not have available at the time the initial bond was set. And
17 today, we think the hearing is the time to present that
18 additional information.

19 What I want to do in the time we have
20 here this morning, Your Honor, is to try and give you a
21 complete and comprehensive picture of the finances of my
22 client, and also the financial position of his parents, and
23 then also of his eight brothers and sisters and their family,
24 who are the people who would be in a position to contribute
25 financially both to the defense costs in this case, but also

1 to the cost of a bond through a bondsman, both in terms of
2 raising money for a premium and posting assets for
3 collateral.

4 I also want to talk about the allegations
5 that have been made by the State that the defendant is a
6 flight risk, and how we think that the true version of those
7 events would impact on the Court's decision in determining
8 whether to reduce the bond, and if so, to what level and
9 under what additional conditions.

10 I also want to talk to the Court this
11 morning about electronic monitoring, GPS monitoring in
12 particular, which is a more high-tech version of the kind of
13 ankle bracelet monitoring that was available a few years ago.
14 And I provided the Court at the time we filed our motion with
15 some information from a vendor here in Prescott, who is a
16 representative of a national company, who has the capability
17 to provide and service and monitor the equipment in this case
18 on very short notice at the defendant's expense. And I also
19 have some information I am going to provide the Court today
20 about the experiences in Maricopa County with electronic
21 monitoring and how that interfaces with their pretrial
22 services program.

23 And I want to talk in specific terms
24 about the statutory factors in A.R.S. 13-3967 that the Court
25 is obligated to consider, on one level or another, in

1 determining what the appropriate release conditions should
2 be.

3 If I could start with the finances,
4 Judge. I have provided the clerk, and I have extra copies
5 for the Court, with a series of eight-and-a-half by eleven
6 versions, for those of us -- me primarily, who are somewhat
7 visually challenged and might have trouble seeing those
8 charts on the board -- and I can give you the first one is --
9 I provided Mr. Ainley with a copy of these, as well -- this
10 is eight-and-a-half by eleven of what I have on the chart
11 here.

12 Judge, I think you must have some sense
13 from the evidence that was presented at the *Simpson* hearing
14 in this case and also in other proceedings about the
15 devastating effect that Mr. DeMocker's arrest about four and
16 a half months ago has had on him personally and his finances,
17 and the disastrous effect of that consequence has to be taken
18 in the context of what his finances were just prior to the
19 death of his former wife in this case. And you heard in
20 considerable detail from his divorce attorney what those
21 circumstances were.

22 Just to remind the Court, in general
23 terms, during the period of time in the period of years
24 leading up to the death of Carol Kennedy in July of last
25 year, Mr. DeMocker had been on a steadily upward tick in his

1 own personal earnings. And the records show that year
2 against year, particularly once he moved over to UBS, he was
3 earning more and more compensation in his work as a financial
4 advisor. But there were commensurate increases in all of his
5 expenses. His daughters grew older. There was private
6 school. There was college. There were automobiles for young
7 women who weren't driving yet at the time of the separation,
8 and there were two households to run. And in general terms,
9 Mr. DeMocker had the responsibility for five years, first on
10 a voluntary basis, and then for the last year plus once the
11 divorce was filed, pursuant to court order, to pay all of the
12 expenses of the family.

13 Miss Kennedy was either unemployed or employed at very modest
14 wages.

15 So the burden to service all of the
16 obligations of both families, the Carol Kennedy family and
17 the house at Bridle Path, and his own household and expenses
18 and the expenses of their daughters, fell entirely on
19 Mr. DeMocker. As a result, the financial circumstances were,
20 as Anna Young described them to you, that Mr. DeMocker had
21 two homes. They were heavily mortgaged with now,
22 unfortunately, in the down-turned real estate economy, either
23 no equity or negative equity. There was a considerable
24 amount of debt, a lot of it credit card debt but also some
25 other obligations, and nothing else particularly in the way

1 of assets to point to.

2 Mr. DeMocker said in the divorce, and
3 would have been able, clearly, as he has put it, to spend his
4 way through these obligations. That he generated significant
5 income particularly for this community, to the extent that
6 his ability to pay all of these obligations for the four and
7 a half years prior to the court order was not a particular
8 problem, and his ability to continue to pay all of these
9 obligations after the divorce, including the spousal
10 maintenance to his wife, were not going to be a particular
11 problem for him.

12 The fact of his particular financial
13 structure, though, essentially set him up to be in this
14 position, if suddenly the rug were pulled out from under him,
15 as it was when he was arrested on October 23rd. All of a
16 sudden his income went from big numbers, sometimes as much as
17 \$40,000 a month, to zero. He was placed quickly on
18 administrative leave, unpaid administrative leave by his
19 employer. That is the status today, more than eight months
20 down the road. But he has had no income, except for some
21 very small commission checks that came in shortly after his
22 arrest.

23 And as a result, the debt structure that
24 he would have been able easily to service has become a
25 crushing obligation. What I put up here on the board, Your

1 Honor, is an attempt to show in general terms -- there is
2 much more behind this -- in general terms, the major fixed
3 obligations -- there is nothing in here for food or for
4 entertainment or travel or unexpected expenses. For example,
5 his daughter Charlotte, who is in court here today, several
6 weeks ago had a unexpected emergency appendectomy, which was
7 that couldn't have been planned for. Would have been no
8 particular problem for him to cover financially had he been
9 out of jail and working, but is another burden that is not
10 reflected on this chart.

11 If you look here in this chart in the top
12 portion, house plus vehicles plus loans. These are the major
13 fixed obligations here. The total of these obligations on a
14 monthly basis, and these are essentially -- the monthly cost
15 is either the fixed payment or the amount that the creditors
16 are now demanding -- excluding the obligations to Bridle Path
17 are \$7,630 a month. Through today we estimate that of those
18 fixed obligations, which are house payments including the
19 mortgages, the home equity loans, there is nearly \$25,000 in
20 arrears today. It is actually much more than that, but these
21 are the amounts that the creditors would require to reinstate
22 these obligations immediately. The actual amount in arrears
23 could be considered to be much more than that. The total
24 remaining obligations on those debts is about \$475,000.

25 If you look at the Bridle Path

1 circumstance, there is no entry for monthly cost. The Bridle
2 Path mortgages are in default. A foreclosure is scheduled
3 for March 31st. There is an amount to reinstate that and to
4 hold off the foreclosure of \$21,418. That includes fees, the
5 attorneys fees, the kinds of things that are typically folded
6 into a reinstatement amount on a defaulted mortgage. That is
7 just the first mortgage. The first mortgage holder is the
8 one who has noticed the trustee sale.

9 The remaining obligation on the first
10 mortgage is \$377,000. The home equity loan, which is only in
11 Steve DeMocker's name is almost \$72,000, and it is behind at
12 least one payment.

13 So you can see that based just on these
14 fundamental obligations, not taking into consideration any
15 other kind of either non-recurring expense or extraordinary
16 expense, or much less attorneys fees or costs or defense
17 costs or anything else, the financial situation for Steve
18 DeMocker has gone from manageable to crisis level in a short
19 period of time. And the only reason that it is not worse
20 than this is that the family, principally his parents, have
21 done the best they can to funnel money or to allow the small
22 amount of money that was received in these commission checks
23 to be parceled out in a careful way to try and keep some of
24 these wolves away from the door for as long as it has
25 happened.

1 The reason it is important is during this
2 period of time, Mr. DeMocker's younger daughter Charlotte,
3 who is still in high school, has been living in the townhouse
4 in Alpine Meadows, and her Aunt Sue, who is in the courtroom
5 here, has been in town and basically put her own life on hold
6 and the lives of her own children to come out here and be
7 available, both to help with the defense as an investigator
8 using her considerable skills, but also to be a parent to
9 Steve's daughter during this period of time, and trying to
10 make the very best of what they can on an extremely limited
11 and austere stipend, trying to keep this alive. There is no
12 money available and has been no money available to pay these
13 obligations for a long period of time now.

14 We are really talking about a situation
15 that has cratered since October in the four-and-a-half months
16 since his arrest. Prior to that, Mr. DeMocker was, of
17 course, working and earning money and able to meet these
18 obligations on his own. This is a financial picture of what
19 really has happened since his arrest on October 23rd.

20 The bottom of this chart, we have
21 summarized, essentially, a net worth, that if you add in the
22 obligations, the assets -- we put a value of \$275,000 on the
23 townhouse. We continue to monitor sales of comparable
24 townhouses. This is in an area of the Hassayampa where there
25 are a number of similar or close to similar townhouses that

1 have been on the market. Prior to September of last year
2 when the real estate market abruptly went south, those
3 townhouses were selling for, perhaps, close to a number that
4 would allow Mr. DeMocker to at least walk away from the
5 townhouse.

6 Since then, there have been virtually no
7 sales. There was one short sale, and our latest information
8 is on a short sale that may have closed yesterday, but the
9 number that we have picked here is only slightly more than
10 Mr. DeMocker paid for the townhouse to begin with a number of
11 years ago when he and Carol separated.

12 He has a motorcycle that he purchased.
13 We will talk about that later. There are payments behind on
14 that. You can see there is nearly \$1,500 in payments past
15 due on the motorcycle at this point.

16 Then the Bridle Path house is a
17 particular concern. The Bridle Path house is owned by the
18 estate. It was conveyed by Mr. DeMocker to the estate. That
19 is consistent with the divorce settlement where Carol Kennedy
20 was going to wind up with that house. But the estate didn't
21 have the funds and continues not to have the funds to pay
22 this debt, so Mr. DeMocker was advancing money to the estate,
23 essentially, to pay the Bridle Path mortgage.

24 The two huge problems are: That hasn't
25 been able to happen since he was arrested, and the value of

1 that Bridle Path house has probably dropped by at least
2 50-percent. The \$250,000 represents the larger of two short
3 sale offers received recently for the property. We calculate
4 that it would probably take closer to \$500,000 in a sale
5 price for the estate to simply break even at this point. In
6 real estate terms, the estate and by extension Mr. DeMocker
7 are significantly upside down in both of these properties,
8 the townhouse and the Bridle Path house.

9 In addition, if you just look at the
10 standard net worth calculations, he has a negative net worth
11 without Bridle Path of \$186,000, just taking assets over
12 liability. If you put the Bridle Path house back into play,
13 it is even worse. His negative net worth with the Bridle
14 Path in its entirety, meaning the first and second, it is
15 \$386,000.

16 The middle one is the Bridle Path home
17 equity line of credit, which I said a minute ago was
18 Mr. DeMocker's sole and separate obligation. It is in his
19 name only. So whether you consider him to be the de facto
20 borrower in both mortgages or just one, he is still
21 considerably upside down on a financial basis, however you
22 want to calculate it.

23 The point of this, Judge, is that one of
24 the considerations under the statute is the financial picture
25 of the defendant. The State has made at various times,

1 including to the grand jury, allegations that Mr. DeMocker
2 has hidden assets, transferred assets, but has not to this
3 date produced any proof of which assets they are talking
4 about and where they are or where they believe they are.

5 And we have said all along, and Anna
6 Young said, that when those allegations were made during the
7 divorce, Mr. DeMocker and Anna Young quickly and thoroughly
8 and completely responded showing where every penny went.

9 The situation isn't very difficult.
10 Mr. DeMocker's entire compensation, all of his earnings for a
11 number of years now have been derived from his employment.
12 He has no other source of income. There is no money off
13 shore. There is no money in another bank account.

14 There is a differed compensation package,
15 which consists of 9,000 shares of UBS stock that once upon a
16 time was worth perhaps \$600,000. The last time we looked,
17 which was in the last few days, UBS was trading at \$8 a
18 share, so it is about \$70,000 now. That money is not
19 available to Mr. DeMocker's family, because it hasn't vested
20 yet. It will vest, if at all, a year from now, and the
21 condition is that Mr. DeMocker continue to be employed by UBS
22 and continue to be in good standing during that period of
23 time.

24 Which leads to another critical problem.
25 Mr. DeMocker's licenses to practice his profession are

1 contingent upon a number of things, not the least of which is
2 that he be free from any judgments, personal bankruptcies,
3 seizures by creditors, or any other adverse financial
4 actions. That is understandable. He is financial advisor,
5 and there is a public interest in making sure the financial
6 advisors can keep their own finances in order.

7 One of the concerns has been all along
8 not knowing if and when Mr. DeMocker would be out of jail to
9 try and keep this ball in the air, at least to the extent of
10 trying to avoid foreclosures and lawsuits and repossessions.
11 And we have been able to do that so far, but the clock is
12 running down on us, and the foreclosure is looming on the
13 Bridle Path first in just a few weeks here. We are not sure
14 what we are going to be able to do.

15 But the hope is that Mr. DeMocker is
16 released from jail, not that he could go back to work at UBS
17 until the case is over, until he is acquitted at the end of
18 the case, but at least the hope is that we can create some
19 savings in the family by not having to have other people care
20 for his children that would allow us to have small amounts of
21 money to throw at some of these creditors to at least keep
22 them backed up and away from foreclosures and away from
23 lawsuits.

24 This is a difficult situation made
25 particularly difficult by forces beyond our control regarding

1 the real estate market and the securities market. That is a
2 view of Steve DeMocker's finances. He has no income or
3 assets from which he could contribute any amount of money
4 toward a bond in any amount. So he is entirely dependent on
5 others.

6 So if I could show you the next possible
7 set of players in this case, Your Honor, it is his siblings.
8 You have seen, although I don't think you have been
9 introduced to many of his siblings, Steve is the oldest of
10 nine children. His brother Jim is in the back of the
11 courtroom at the right. He is next in line. He is here from
12 Washington D.C. I asked him to come in the event that the
13 Court had any questions. He is authorized and available to
14 speak on some of these issues on behalf of his family. And,
15 of course, the Court has seen Susan DeMocker at other
16 proceedings and she is here, but there are six other siblings
17 who all at one time or another have been present in court.

18 Let me give you a readable --

19 THE COURT: I can read it. Thank you.

20 MR. SEARS: I am just projecting here. I
21 couldn't read it.

22 THE COURT: I understand.

23 MR. SEARS: I assume that everybody else is as
24 blind as I am.

25 This is an attempt, Judge, to sort of

1 give you a snapshot, without the kind of detailed line item
2 information about each of the siblings. They have a number
3 of things in common. None of them are anywhere as well off
4 financially as Steve was prior to his arrest. All of them
5 have for one reason or another significant issues in their
6 own personal lives.

7 For the most part they have children.
8 And you can see, for example, looking at Sharron, who is the
9 second oldest daughter. She is a physician, but she is about
10 to adopt a special needs child on her own, and has a debt
11 service for her own medical practice, which she has had to
12 limit somewhat because of the needs of this adoptive child,
13 and considerable medical school debt. It is just an example.

14 Jim, who is here, works for the federal
15 government, lives outside of Washington D.C. Has a daughter
16 in college and a son that is certainly college bound. A
17 mother-in-law who has considerable needs that they are
18 assisting with. They have a home and mortgages and the kind
19 of debt that you would expect that goes with that sort of
20 lifestyle.

21 Sue, I think it is really not fair to
22 call her unemployed. It is technically correct, but I
23 mentioned to you Sue had a very good position at Columbia
24 University as an investigator there that she, essentially,
25 gave up to come out here when Steve was arrested, to be here

1 for his children and to help us with the case. She has three
2 children of her own, and I have spent a fair amount of time
3 with her oldest daughter, who is now living abroad, but is
4 coming back. She has her own student loan, and clearly has
5 no cash available for any part of this project.

6 Dan lives in the Washington D.C. area.
7 He has a young family, and I met with him in December at some
8 length when I was back in D.C., and we spent a lot of that
9 meeting talking about just how miserable the building economy
10 was in Washington D.C. and how he went from really managing
11 projects to being a headhunter trying to find new jobs for
12 his company during that period of time.

13 Mary has been here a number of times.
14 She has young children. She has a disability. She was a
15 classical harpist. She played the harp, and she can't do
16 that anymore. They are terribly affected, as are all of the
17 DeMockers, by the downturn in the economy. They have no
18 substantial savings. They have no other assets. They are
19 struggling to get by on their own now to the point where she
20 can't even afford health insurance for her family.

21 Michael is a newspaper photographer for
22 the New Orleans Times Picayune. He is married, has a son, a
23 young son. His wife has had some large uncompensated medical
24 bills. They had a home that was there when Katrina hit, and
25 just like most of the other residents of New Orleans, those

1 people whose houses were spared found that the value of their
2 houses -- I hate to be corny -- but the house values went
3 under water. And that's the reality that Mike is facing now.

4 Donna and Judy, the two youngest girls.
5 Judy bought a home with some other people. She took on all
6 the debt, and has only a fraction of the equity there and is
7 living paycheck to paycheck. Donna has a contract that runs
8 out this summer with no guarantee of future employment after
9 that, and her family has spent a considerable amount of money
10 in a custody battle over her husband's son, her stepson,
11 which is on-going and which has already run substantial legal
12 bills.

13 This is the reality. The money that has
14 come thus far for maintaining Steve's family and trying to
15 pay some of the expenses that I just talked to you about, and
16 paying the significant and substantial legal defense fees,
17 all the related costs, the experts that the Court has heard
18 from, of course, the attorneys and paralegals and the support
19 staff, the investigators, the mitigation specialists, all the
20 other people that are on the team, that money has come from
21 Steve's parents, who are the last possible source here. And,
22 frankly, there could be a day, Your Honor, there could be a
23 day down the road when the cost of this case will outrun the
24 collective finances of all the DeMockers.

25 And I will tell you that Dr. and

1 Mrs. DeMocker, whom I know the Court has seen in court
2 before, has essentially said they will sell everything, they
3 will liquidate everything they have on Steve's behalf. It is
4 a shocking concept that people at their age would basically
5 put themselves in a position where they would have nothing.
6 They would be at a start-over as they approach their 80's.
7 This is their financial situation.

8 If you can see that, Your Honor.

9 THE COURT: I can.

10 MR. SEARS: John DeMocker, Steve's father, is
11 79 years old. He continues to work as a radiologist in up
12 state New York. They have nine children, including Steve,
13 and 14 grandchildren. He is married to Jan DeMocker, who
14 herself is 78 years old. Considering all of the expenses
15 they have incurred raising this big family and putting them
16 all through school, helping with grandchildren, helping with
17 all kinds of other things, what they had accumulated was
18 really pretty modest. I use the word "modest" perhaps too
19 often. It was a pretty modest portfolio, but it was
20 something that they could retire on, and they were looking
21 forward to doing that.

22 They have a home. The value was a little
23 bit over \$400,000 before the real estate market collapsed.
24 It is now something less than that. They owned it free and
25 clear, and that was going to be their retirement home. They

1 have now taken out a \$200,000 home equity line of credit to
2 fund, in part, Steve's defense, so now more than 50-percent
3 of the value of that home is encumbered with monthly
4 payments.

5 They had a SEP IRA, which was invested in
6 the market. It has taken a huge hit, somewhere between 40-
7 and 50-percent, depending on what day you look at the
8 statement. If they took that money out, they have to pay tax
9 on it when they get it. It was a SEP IRA, so it was tax
10 deferred, the earnings were tax deferred, but once they
11 withdraw it, it goes into their tax return subject to income
12 tax.

13 They have an annuity that pays them a
14 modest amount that has a locked in death benefit. If they
15 liquidated that, it is subject to a penalty, and it has also
16 taken a big hit as a result of the downturn in the market.

17 They have some long-term life insurance
18 that has riders for long-term personal care and home care and
19 a modest cash value, which they have vowed to cash out, which
20 means they would be left without any long-term insurance and
21 would have to rely on family or other people to take care of
22 them if they became disabled.

23 They have a small cash account, less than
24 \$10,000, and then some stocks, which have taken a big hit. A
25 lot of their stocks were held -- were UBS stocks, so they

1 went on the same downward ride that Steve's deferred
2 compensation package went on. He has no pension. He has
3 been a self-employed physician for 50 years.

4 They have this credit union home equity
5 loan as a liability that I just talked about. They were
6 helping with a disabled grandchild's Special Ed tuition.
7 That can't do that anymore. They have the current and future
8 legal expenses and defense costs.

9 They may need medical care and assisted
10 care. They are in remarkably good health at this point, but
11 they are 79 and 78 years old. They would need to live,
12 somehow, if they were able to retire, even if they sold their
13 house. During my last long conversation with them, they both
14 told me personally that if it came to it, they would sell
15 their house to keep this thing going.

16 Mrs. DeMocker is an ordained minister.
17 She retired more than ten years ago. She has the same basic
18 financial situation. She has a few of her own assets. She
19 has about \$5,000 in a savings account. She had some stocks
20 that were worth \$90,000 on February 28, again 40- to
21 50-percent less than they were worth the same time a year
22 ago, and they continue to drop.

23 She has her own long-term life insurance
24 policy with the same long-term care and home health care
25 rider with a modest cash value if it were surrendered.

1 She does have a pension. There are two
2 small accounts totaling about \$45,000, and they are all of
3 the same liability. This is the circumstances for Steve's
4 parents, and now you have seen the combined circumstances.

5 There is really nobody else out there.
6 There are no additional pots of money. Family members,
7 particularly siblings, have said if they could, they would
8 consider borrowing money themselves to help fund this, but
9 that is the circumstances. That is where we are financially.

10 It puts the family in an impossible
11 position, Your Honor, and I will talk about this more toward
12 the end, but the impossible decision is going to be if the
13 bond were reduced to some makeable level, they would still be
14 faced with the decision of taking a steadily diminishing pile
15 of money that was put aside for Steve's defense and using
16 part of that for a non-refundable bond premium. And the idea
17 of having to keep Steve in jail for as long as it takes to
18 bring this case to trial because they can't afford to do
19 otherwise is a crushing decision on the family, particularly
20 on his parents. And knowing that if money were no object,
21 Steve could have been home six weeks ago is a terrible thing
22 for parents to have to think about, but they think about it
23 every day.

24 The estate of Carol Kennedy, of course,
25 has no connection to Steve. The divorce took care of that.

1 The estate itself has its own liquidity and solvency
2 problems. I monitor that somewhat, and there are a lot of
3 obligations. There are tax obligations. There are creditors
4 of Carol's, which were not -- who were not paid because she
5 died before the money that came out in the divorce settlement
6 was used to pay off some of these other creditors. They
7 filed creditor claims. They have to be paid. So that's the
8 financial situation, Your Honor.

9 I want to talk, if I could, about the
10 flight risk allegations. The principal allegation about
11 Steve DeMocker as a flight risk comes from the story about
12 these books that he ordered from Amazon.com. I have provided
13 Mr. Ainley with an excerpt from a police report which was
14 disclosed to us and has the State's Bates stamp number on it.
15 This is a portion of the report.

16 What happened is that when Steve was
17 arrested in October, the police came down, he was sitting in
18 his office in Phoenix at work, and they came down and they
19 told him, essentially, that he was under something they
20 called "investigative detention," and that they wanted to
21 talk to him and that depending on his answers, he would
22 either be arrested or something else.

23 We don't think that is true at all. We
24 think they came there to arrest him. We think they just
25 wanted to take a statement from him, and he gave them a

1 statement. And one of the things that he said is in this
2 excerpt. It has to do with the books. This is after he has
3 been confronted by armed and uniformed police officers who
4 were clearly there to arrest him, and he tells them what this
5 is about.

6 The books are really pretty trashy. They
7 are sort of pulp mass market paperbacks, and they were
8 ordered -- two of them were found in a mini storage unit. So
9 you can see how much value Mr. DeMocker was placing on that
10 information. He threw them into a mini storage. None of
11 them were scanned. There were no dog-eared or underlined
12 pages. Some of them were never opened.

13 The circumstance is that this is the
14 middle of August. In that six-week period between the time
15 that his former wife and the mother of his children was
16 murdered, Mr. DeMocker was questioned and not charged and
17 then basically kept in the dark. The police and the County
18 Attorney's office went into an information lock down. They
19 sealed all of the search warrant affidavits. They, with the
20 assistance of the medical examiner, prevented the disclosure
21 of the autopsy report for that period of time. There was no
22 information coming out about any of this.

23 Instead, we were trying to do an
24 investigation because it seemed, particularly from statements
25 in the press, that if Mr. DeMocker was not the only suspect,

1 that he was likely to be a significant suspect. So we
2 attempted to do some kind of an investigation. And what we
3 learned and what we shared with Mr. DeMocker was that there
4 seemed to be a circle of people, including Jim Knapp, who
5 were going on-line, sending out e-mails, telling circles of
6 people what a bad person Mr. DeMocker was, that they were
7 sure he had done this, wild stories about prior domestic
8 abuse that no one except for those people had any reason to
9 believe happened; not the children, not Mr. DeMocker, not
10 Carol's real friends, people she had known. These were just
11 people on the outside looking in.

12 And there was a particularly disturbing
13 episode where somebody called and said they knew Carol,
14 talked to Mr. DeMocker, said that they had psychic abilities,
15 and that they had channeled the discussion with Carol, and
16 Carol had talked to them about how Steve didn't do this. And
17 that person then apparently contacted the police and the
18 police sent somebody out to interview her.

19 So the state of mind with Mr. DeMocker
20 and with the rest of us that were involved in this case in
21 August was a great deal of uncertainty. It appeared to us
22 that the police were looking desperately to find information
23 in this case. We didn't know and they weren't sharing where
24 they were looking, what they were doing, who they were
25 talking to, so we had to rely on this sort of gossip and

1 information.

2 We had already begun to paint a picture
3 of Mr. Knapp as a very unstable person, a person that was
4 trying to shake down the estate for money, had his own
5 personal problems, had problems in his own marriage, problems
6 with his own children, and it looked to us like Mr. Knapp was
7 giving the police information. Mr. Knapp told us that he had
8 provided the police with a theory of what happened. The
9 police told him that it was a great theory. Mr. Knapp was
10 given control of the house within 24 hours after the body was
11 discovered before the police had, apparently, even checked
12 out his alibi for that night.

13 They searched Mr. DeMocker's townhome
14 several times, but they never searched in any meaningful way
15 the guesthouse where Mr. Knapp was living on the property.
16 The Court's heard the testimony from Detective Brown that
17 they were there 15 to 20 minutes and took some photographs
18 and didn't look around. So Mr. DeMocker's state of mind was
19 concerning in July and August that something was happening.

20 Mr. DeMocker would tell you, as he told
21 the police officers, that he was scared. And he had talked
22 to somebody and they said, well, you could always run away
23 and hide, and he had, being a pretty thorough person, sent
24 away for these books, looked at them and never acted on them.

25 The key factor here is that two months

1 after these books were delivered, Mr. DeMocker is right where
2 everybody knows he will be. He is sitting at work, wearing a
3 necktie, going to work every day, living in the same place,
4 has a new passport, has not used it, has not been out of the
5 country, and has done nothing whatsoever, has moved no money
6 anywhere, out of the country, other banks, to Switzerland,
7 anyplace. He has done nothing that would make anyone think
8 that he was actually acting on the idea that he could run
9 away.

10 His girlfriend, Renee Girard, who is in
11 the back of the courtroom, was interviewed by the police
12 after his arrest, and they asked her about these books, and
13 she said she thought they were a joke. They were there. It
14 was something he thought about and quickly discarded.

15 They always talk about a person's actions
16 speaking louder than their words, and the truth is
17 Mr. DeMocker didn't go anywhere. He didn't go anywhere. He
18 hired a lawyer. He hired an investigator, and he was doing
19 his best to try and prevent his worse nightmare, which would
20 be that he would be arrested without probable cause, and that
21 he would be arrested based upon incomplete and premature
22 evidence, and that came true. That is why we are here today.
23 That has been our position all along in this case.

24 Mr. DeMocker applied for another
25 passport, Judge. And here are the circumstances surrounding

1 that. Much was made at the *Simpson* hearing by the State of
2 his application and even a suggestion that he committed a
3 crime.

4 I have here in my hand, Judge, this is
5 what was left by the police at Mr. DeMocker's townhome after
6 the first search. I didn't make a copy of it, because it
7 doesn't photograph well. I think it is the third item from
8 the bottom. You can sort of make out the word "passport."
9 And here is what happened.

10 The police came -- the police talked to
11 Mr. DeMocker that night at length. While they were talking
12 to Mr. DeMocker, they were writing search warrants, including
13 a search warrant for his townhome. The search warrants were
14 executed early that morning. They were signed by Judge
15 Markham about 7:30 that morning, and Mr. DeMocker was told
16 that he couldn't go back to any of those locations until the
17 police gave him the all clear. This document was left by the
18 police that day.

19 I now realize what happened. Two things.
20 I collected this document. Mr. DeMocker didn't have it, and
21 I didn't make a copy for him because it is basically
22 illegible. What happened was I started asking the police by
23 the next week for a legible copy. And they didn't give it to
24 me. And eventually about two-and-a-half weeks later, I
25 struck a deal with the sheriff's office where I was allowed

1 to go to their office and sit there, and they dictated to me
2 what was on -- I would say, I can't read this item number,
3 and they would dictate to me and I would write out what it
4 said.

5 But when Mr. DeMocker was applying for
6 his duplicate passport, at the same time he was applying for
7 a driver's license, credit cards, buying new underwear and
8 socks, trying to make arrangements because they had his
9 car -- he was trying to put his life back together again --
10 he didn't have this document, and even if he did, I am not
11 sure whether a reasonable person could look at this and say
12 that is a receipt for my passport, but I had it, and I didn't
13 give him a copy, and that is the circumstance at that point.

14 Mr. DeMocker didn't use that passport.
15 He didn't go anywhere that required a passport from the time
16 he got it in July until the time he was arrested in October.
17 The State will see that when it is unsealed. It will see
18 there are no stamps on the passport and there are no records
19 of him crossing the border during that period of time.

20 The other thing that the State has
21 pointed to is a motorcycle that he had that was packed and
22 had some GPS maps for Mexico and some camping supplies and a
23 loaded handgun. The State knows that Mr. DeMocker had that
24 handgun for more than ten years. He bought it at Bucky
25 O'Neill's pawn shop here in Prescott. And the camping gear

1 and the motorcycle were replacement transportation.

2 Mr. DeMocker also had leased a car from
3 time to time -- not really leasing it. He was renting it on
4 a daily basis or short-term basis if he needed to travel by
5 car, but that motorcycle was his principal form of
6 transportation, and you can see that he went out and bought
7 that.

8 The idea that Mr. DeMocker was planning
9 some sort of international get-away is a real head scratcher
10 for us, Judge. That his clever plan to flee the jurisdiction
11 would be to get on a bright, shiny, big silver BMW motorcycle
12 with a sliver motorcycle helmet and his girlfriend on the
13 back and drive to Mexico is hardly, in our view, worthy of
14 serious discussion that that was a plan that he was going to
15 escape on this motorcycle. A non-Mexican appearing gentleman
16 like Mr. DeMocker was going to get lost in Mexico on this
17 motorcycle. It just doesn't make any sense. It was how he
18 got around. Family members know that he had talked for years
19 about getting a motorcycle. This was an opportunity or him
20 to do that.

21 He was spending more and more time in
22 Phoenix. He had rented an apartment for his daughter who was
23 working in the Obama campaign at that point, and had a base
24 of operations in Phoenix and an office in Phoenix during that
25 period of time.

1 The last thing I want to talk about is
2 GPS monitoring and pretrial services, Judge. I know we are
3 running short of time here.

4 We had proposed, and we still propose
5 that the Court consider ordering GPS monitoring as a way to
6 ameliorate the high bond that the Court had previously set.
7 If the purpose of bond is to ensure Mr. DeMocker's
8 appearance, GPS monitoring is highly successful. I provided
9 some information, and here is a copy of a brochure from the
10 company in Maricopa County that does monitoring for Maricopa
11 County pretrial services.

12 And they provide different levels. They
13 have landline, cell phone and then GPS, which they describe
14 as being appropriate for the highest risk individual. It is
15 the best technology.

16 What we propose, your Honor, is this:
17 Looking at the statutory factors and the way they apply here,
18 Mr. DeMocker, has, of course, no prior criminal history.
19 He's lived in Prescott for over 20 years. He owns two pieces
20 of property, or owned two pieces of property in Prescott.
21 He's never failed to appear, obviously, and has no residence
22 outside Yavapai County, Arizona, has no money or funds.

23 The Court has previously found that he is
24 bondable, which means that the Court found in January that
25 the State could not meet the proof evident, presumption great

1 standard. I will tell the Court that our view is that this
2 grand jury determination and subsequent indictment doesn't
3 raise that bar at all, and I think when the Court reads the
4 transcript and sees our motion, the Court will have its own
5 view of the weight of the evidence, but it hasn't shifted
6 significantly. There is no new game changing evidence at
7 all.

8 He has strong family ties. We know much
9 about that. He has the possibility of employment. He has no
10 financial resources. His character -- the State can say all
11 they want about his womanizing, but in terms of his
12 commitment and love for his own family and his family's love
13 for him, it couldn't be clearer. It just couldn't be
14 clearer. And the State has attempted to damage his character
15 and reputation as part of their case against him, but it is
16 just that. It is just an attempt.

17 There are no drug issues in this case.

18 And we think that if you balance all of
19 this together, Judge, this is what I think might make sense.
20 I recognize we were asking the Court to take a great leap of
21 faith with us here. But we think we could afford a bond,
22 both in terms of the non-refundable premium and collateral in
23 the range of \$250,000. And if you couple that with GPS
24 monitoring that is tied to a pretrial services supervision
25 order where the Court can have the monitoring company report

1 to a pretrial services office, to the Court directly, if you
2 want to, to Mr. Ainley, we don't care. We really don't care
3 who gets that information. It can be provided immediately if
4 there is any anomaly in the system.

5 We would ask for the right to be in
6 Yavapai and Maricopa County so that he could be available to
7 work on his own case, a large part of which is centered in
8 Maricopa County, but we would be open to suggestions of a
9 tighter geographical restriction, if the Court thought that
10 was appropriate.

11 You can see from that statement, Steve
12 had said he is not going anywhere. Again, actions speak
13 louder than words. He has, from the time he began to realize
14 he might be a suspect, done all of the right things. He has
15 stayed around. He has retained counsel. He has defended
16 himself, and he intends to see this case through and be
17 acquitted and be reunited with his family.

18 There is some precedent recently for
19 setting a bond in that range. The Fraijo case that Judge
20 Hess just completed last week involved a defendant who had,
21 apparently, six prior felonies. The least of them were prior
22 drug convictions. The State's evidence against Mr. Fraijo
23 was by all accounts, including the conversation I had with
24 the prosecutor, much stronger. He made damaging admissions
25 to a number of people. He was on a surveillance video in the

1 presence of the victim shortly before the murder. He was
2 charged with capital murder. He was convicted of capital
3 eligible murder, and the jury sentenced him to life. His
4 bond was set at \$300,000. He also had connections out of the
5 country. None of those things seem to apply in any way to
6 Mr. DeMocker. Maybe most importantly the quality and the
7 weight of the evidence against him is so different from the
8 evidence against Mr. Fraijo.

9 The other point is, if the Court is
10 concerned, \$250,000 bond, if forfeited, would be devastating
11 to the DeMocker family, individually and collectively. It
12 would be unthinkable for Steve to put his family in that
13 position of running away and expecting them to eat a \$250,000
14 bond. They can't do it. It would be devastating to any one
15 of them or them collectively.

16 If the premium -- if the bond were set at
17 a higher amount, the premium, if it were paid, would draw
18 down in a devastating way on the money available for the
19 defense to the point where at some not to distant date
20 Mr. DeMocker might be indigent and unable to defend himself
21 at private expense, and the cost to the county and the tax
22 payers would be significant if he were to be given appointed
23 counsel. We hope it doesn't come to that.

24 But we think a combination of a bond in
25 that range, Judge, and the GPS monitoring, which is

1 high-tech, remarkably accurate, and essentially tamper proof,
2 would do everything the Court would need, I would think, to
3 assure itself that Mr. DeMocker would be here for court.

4 Most of all, he is not going anywhere.
5 He is not going to leave his family and his children in his
6 wake wondering if he was guilty, having to live with that
7 fact. He will stand and he will fight these charges, and he
8 will be vindicated. We are confident of that at the end,
9 Your Honor. All of that is inconsistent with a man that
10 would consider for a minute running away. He had those
11 thoughts, and that is all they were. They were simply
12 thoughts, and as he said, they were fear based and stupid.
13 And he realized that, essentially, as soon as he took the
14 books out of the package and looked at them. He said he
15 could never do that, and he would never do that in this case.

16 I think this is reasonable. I think if
17 the Court wanted to order pretrial services on some level to
18 monitor and require him to report in person, to call in, to
19 do anything that they required and the Court required, that
20 is all fine. There is no condition of that sort that we
21 would not agree to. There is simply nothing about that we
22 would consider unreasonably burdensome. It is simply the
23 amount of the bond that is keeping Mr. DeMocker where he is
24 now.

25 He has been in jail and away from his

1 family and his children for four-and-a-half months. He needs
2 to be home. They need him. The case against him does not
3 rise to the level where it is a certainty that if the door
4 opened he would be gone unless he were held on a huge,
5 unmeetable bond. All of this, I think, can be resolved in
6 the way I proposed. I would ask the Court to make those
7 modifications.

8 I have Jim DeMocker here to answer any
9 questions that the Court might have. If the Court wants
10 additional detailed financial information, we can provide
11 that to the Court. If the Court wants to hear from the GPS
12 monitoring provider beyond the information, I can do that.
13 My sense is that's a program that is tested and available and
14 can be done and has a great success rate.

15 The last thing: There is one other thing
16 about the flight issue I should point out very simply. The
17 Courier ran an article several weeks before the arrest. I
18 don't think we will ever know whether it was planted by the
19 police or not, but the article said, in essence, that an
20 arrest was imminent, that they were waiting for one more
21 piece of important blood evidence and then would make an
22 arrest.

23 If it was intended to spook Mr. DeMocker
24 into running, it had exactly the opposite effect.
25 Mr. DeMocker was sitting in his office when the police

1 contacted him, and he knew about that article and read it,
2 and knew that it wasn't true, and they were not going to find
3 any blood evidence, because his wasn't there that night.

4 That is exactly the kind of circumstances
5 you would expect if a person really thought they were going
6 to get caught would have prompted them to head for the
7 border, and it had just the opposite effect on Mr. DeMocker.

8 I think that this case is going to take
9 some period of time to resolve. It would be stunning to the
10 family to have Mr. DeMocker remain in jail while this case
11 was pending. It would be heartbreaking. It would be
12 terrible for his family and terrible for his children, and a
13 terrible burden on Mr. DeMocker, and I ask the Court to make
14 these modifications.

15 Thank you.

16 THE COURT: Who controls Carol Kennedy's
17 estate currently? Who is executor?

18 MR. SEARS: Katie DeMocker. Christopher
19 Kottke represents her in that capacity.

20 THE COURT: Insurance payouts on Carol
21 Kennedy?

22 MR. SEARS: There were two life insurance
23 policies taken out about ten years ago as part of an overall
24 estate planning effort. There were larger policies on
25 Steve's life. Those policies had -- one of them -- both of

them had Steve as beneficiary on her death. One of them had, as a contingent beneficiary, a trust in Carol Kennedy's will for the girls, and at the time what is now Wachovia Securities, was A.G. Edwards, was the trustee and there were restrictions on the money being distributed until the girls were 25. And the second policy, the \$500,000 policy, had no contingent beneficiary designation. Hartford has taken the position that they will not distribute the money to Mr. DeMocker unless and until he is acquitted in this case.

THE COURT: So there hasn't been any distribution to anyone?

MR. SEARS: No.

THE COURT: I recall one was \$500,000. The other was --

MR. SEARS: 250.

THE COURT: Thank you.

That was some of the evidence I heard.

MR. SEARS: The \$500,000 policy, the absence of a contingent beneficiary, I think -- I have been told by people that are smarter than me -- that it would then have to go, if at all, into Carol Kennedy's estate for the benefit of her other creditors.

THE COURT: Mr. Ainley.

MR. AINLEY: Yes, sir.

Judge, I would like to put back up the

1 first poster board that Mr. Sears had up here, and point out,
2 Judge, that while finances are one of the factors that the
3 Court is to consider in determining release conditions, what
4 the Court is normally required to do is look at somebody who
5 is stable. Somebody who has a job, has a house in the
6 community, is a low flight risk because they have ties.

7 And what we are looking at here is
8 somebody who is \$386,000 in debt and getting deeper in debt
9 every month and living paycheck to paycheck. The testimony
10 of Anna Young was that he had two vehicles and essentially a
11 deferred comp program, or a retirement program, so he was
12 financing all of this paycheck to paycheck.

13 Mr. Sears has pointed out, and I think I
14 heard him say, he is not going to be allowed to work -- or go
15 back to work at UBS as a financial consultant, and though
16 later on he said he has possible employment, didn't mention
17 what that was. It is probably raking leaves somewhere,
18 because UBS isn't going to take him back, and he thinks he is
19 going to make enough money doing something else, flipping
20 burgers, raking leaves to finance this.

21 And what you have here, Judge, is a
22 situation where more than one person has just walked away
23 saying this is a hopeless cause at this point in time, and if
24 I am in somewhere else, then I am judgment proof because they
25 can't find me.

1 So there is no explanation for where
2 these finances are going to come from that are going to
3 enable Mr. DeMocker to pull the rabbit out of the hat and
4 keep this going.

5 Additionally, Judge, the fact that it is
6 an inconvenience to his family is not one of the factors to
7 be considered by the Court. Murder is pretty inconvenient,
8 too. Getting killed is pretty inconvenient, but
9 inconvenience isn't one of the factors.

10 So as far as the finances go, Judge, I
11 don't think there is anything here that simply because he
12 doesn't have other people that are willing to put up the
13 money to help him out is not a reason to lower the bond.

14 As to his siblings, he says nobody there
15 is as well off as Mr. DeMocker. I hope that is not true
16 because, apparently, Mr. DeMocker is just shy of \$400,000 in
17 debt, and I hope they are in better condition than he is, but
18 it still doesn't make a difference what their finances are
19 concerning Mr. DeMocker's situation.

20 Lastly, as far as the finances go, it
21 says that his parents are willing to put up money. You know,
22 one of the ways that Mr. DeMocker could relieve that
23 problem -- there are two ways. He could plead guilty, or he
24 can run away, and then his parents aren't going to be putting
25 out any more money either for the defense or for anything

1 else for that matter because he will be gone.

2 Defense counsel says, well, gee, Judge,
3 he is not really a flight risk. But that is not what
4 Charlotte said in her journal. Said, my dad is planning on
5 running away. Does it get any more clear than that? Does
6 that need explanation that Mr. DeMocker was seriously
7 considering leaving and that Charlotte knew about it. He at
8 least shared it with Charlotte.

9 Jacob's statement about the motorcycle
10 was that Mr. DeMocker said that he had the motorcycle in case
11 he needed to get away in a hurry. Mr. Sears says he just
12 bought that for transportation, but then he also outfitted it
13 with metal saddle bags and had supplies and a gun. The
14 commute down in Phoenix is bad, but I don't think it is that
15 bad that he has got to have a gun and supplies and a GPS map
16 of Mexico. And last time I checked, planes fly into Mexico,
17 and Mexico is a pretty good jumping off point if you want to
18 go somewhere else.

19 The books and the passport also speak for
20 themselves.

21 Lastly, Judge, it says that the ankle
22 bracelet would provide GPS monitoring. Looking at the BIK
23 study that Mr. Sears just handed to me a little while ago,
24 second page, the results: 2, jail beds are reserved for
25 serious defendants. An important feature considering

1 overcrowding issues in Maricopa County facilities. Last time
2 I checked, first degree murder with an allegation of death
3 penalty is a pretty serious matter, and Mr. DeMocker fits
4 into the category of serious defendants. And apparently
5 their view is that serious defendants should be in jail beds
6 rather than on GPS monitors, because what a GPS monitor tells
7 you, Judge, is that when it goes off, go close the barn door
8 because the horse is already gone. It doesn't tell you what
9 the person is planning to do. It doesn't tell you anything
10 except where he is up until the point where he cuts it off
11 with the bolt cutters and then he's gone. It doesn't tell
12 you where he went, doesn't tell you what his plans were. It
13 just tells you he is gone, and too bad. Now you have got to
14 go and find him. GPS monitoring is a joke.

15 It can be used for very low risk
16 offenders, guys who are serving out time, who are just going
17 to make their lives worse if they take off. But when you are
18 facing a first degree murder, death penalty case, it doesn't
19 get any more serious. A Class 5 failure to appear is not
20 going to worry you a whole lot.

21 I find it very interesting that Mr. Sears
22 argues today, Judge, that Mr. DeMocker when he heard about
23 the newspaper article or saw the press release and heard that
24 an arrest was imminent, says today he decided it was no big
25 deal and he was going to stick around and he is here, and yet

1 at the end of the *Simpson* hearing, Mr. Sears argued exactly
2 the opposite, that that is why he got the stuff, because he
3 was freaked out after that article and started collecting up
4 all of these items so that he could flee in the future.

5 I point out that the books -- the
6 testimony at the *Simpson* hearing, Judge, was that the books
7 ordered by Mr. DeMocker were ordered on Mr. DeMocker's own
8 Amazon account from his own computer -- or from a computer at
9 the house that he rented.

10 This is a man -- Mr. Sears says, well,
11 Judge, he never acted on these things. Well, he got the
12 motorcycle with the saddle bags. He gathered up all the
13 supplies. Got the gun from wherever he had it, and had it
14 with the supplies and the saddle bags, not the usual place
15 you store a gun. Bought the GPS map of Mexico in October.
16 Bought the books. Got the passport replacement. Told
17 Charlotte that he was going to run, so that she noted it in
18 her journal. Told Jacob that he got the motorcycle so that
19 he could get away fast if he needed to. What part didn't he
20 act on? The only thing he didn't do is actually get on the
21 motorcycle and run. But what does that say about how far
22 Mr. DeMocker is willing to go? He was ready to go.

23 Judge, the bond as currently set is
24 entirely appropriate, given the circumstances of this case.
25 Mr. DeMocker needn't worry about those finances, because he

1 is going to be judgment proof here pretty soon. And he can't
2 go back to work. He doesn't have a source of income. He is
3 not going to be able to pay these debts. He has already
4 acted on things to make himself a flight risk and put himself
5 in a position to run. And GPS monitoring only tells you when
6 he is already gone.

7 For all those reasons, Judge, the motion
8 to reconsider release conditions should be denied.

9 THE COURT: Mr. Sears.

10 MR. SEARS: A couple of things.

11 Working backwards. The concept of GPS is
12 different than the ankle bracelet technology that Mr. Ainley
13 is talking about that just has basically an off-on. The GPS
14 device is a tracking system. It is constantly sending a
15 signal to a satellite that is constantly monitoring real time
16 by the company. And they not only know when he takes it off,
17 they know where he is going.

18 If you look at the materials I provided
19 on Page 2, they talk about having, in Maricopa County, three
20 different kinds of monitoring system. One for clients with
21 tradition landline phones. One with clients who only have
22 cell phones. And then for certain high risk defendants, the
23 agency is using a GPS tracking system. That is what we are
24 proposing. A tracking system that actually allows whomever
25 cares to look at it, which would always be at a minimum the

1 monitoring company, who would be under a court order to
2 provide information to the Court or the pretrial services
3 people or anyone else that the Court wanted involved in that,
4 that actually can see where Mr. DeMocker is going, and I have
5 been told it is plus or minus five feet. They will know plus
6 or minus five feet where Mr. DeMocker is 24 hours a day.
7 That is powerful information. It is not the kind of program
8 that Mr. Ainley is trying to describe.

9 Mr. DeMocker isn't going to be able to go
10 back to work for UBS. He has a PhD. He's taught. He can
11 teach. He can consult. He can write. Perhaps most
12 significantly, he can work on his own case, which works a
13 great savings to the family in terms of additional support to
14 the defense team and would lessen the possibility that
15 Mr. DeMocker would run out of money for his own defense if he
16 were available to work on his own case. In addition, the
17 cost of the defense would go down, because of the ease in
18 talking to Mr. DeMocker rather than getting in a car and
19 driving to Camp Verde every time he needs to be consulted
20 about something.

21 I think Mr. Ainley is reading the statute
22 a little too closely. As I read 13-3967(a)(4), among the
23 factors are the accused's family ties, employment, financial
24 resources. And I think financial resources must mean, in
25 Mr. DeMocker's case, not only his own lack of ability to

1 contribute, but also the corresponding ability of his parents
2 and siblings to contribute. That is the reason why I
3 provided the Court with this information.

4 I didn't say, contrary to Mr. Ainley's
5 remarks here, that Mr. DeMocker was currently better off. I
6 am quite sure that I said that prior to his arrest
7 Mr. DeMocker was the most successful of his siblings.
8 Clearly that is no longer true.

9 The point I was trying to make was simply
10 that none of the DeMockers, from the parents on down,
11 individually or collectively, are so flush that they could
12 fund his defense infinitely and post a two-and-a-half million
13 dollar bond, or anything even remotely approaching that
14 number.

15 Nonetheless, the question is what would
16 it take to keep Mr. DeMocker around and showing up for court.
17 And as I said, I think it is unthinkable that the family
18 would risk their dwindling resources on Mr. DeMocker's bond
19 if they thought for a minute he was going to run away, and it
20 is more unthinkable and unspeakable to imagine that
21 Mr. DeMocker would do that to his family. This is a
22 tight-knit, loving, large family that knows what they know,
23 and has a deep and abiding belief in Steve's innocence, and
24 there is no way in the world that Steve DeMocker would let
25 down his family financially, that he would run away and

1 expect his family to eat any kind of a bond in his case.
2 That is something that is beyond Mr. DeMocker's
3 comprehension.

4 The reason that Mr. DeMocker was trying
5 to make these payments, and the family has been trying to
6 keep them, was to preserve his career. He has the potential
7 of earning millions of dollars if he is able to go back to
8 his work as a stockbroker in the future. That is becoming
9 more and more speculative. As time goes by, the economy
10 changes in a different way. But there is clearly a huge
11 value to Mr. DeMocker in being able at some point to resume
12 his career.

13 But the most important reason he needs to
14 get out is because he doesn't belong in jail. The State's
15 evidence against him is nothing like Mr. Ainley would suggest
16 it is, and the Court knows that. The motorcycle was not
17 purchased after that newspaper came. The camping gear, the
18 gun, the passport, none of those things were acquired in
19 October. Mr. Ainley knows that. Those things -- the
20 passport was replaced within the first week as part of a
21 program to replace all of what the police took, which they
22 still have, including his car. The motorcycle was purchased
23 in early August. It has camping gear. That is not escape
24 gear.

25 The gun had to live someplace, and

1 Mr. DeMocker to this day doesn't know who killed his ex-wife.
2 And we are not entirely sure how Mr. Knapp died. That is a
3 matter which the Prescott Police Department appear to be
4 continuing investigating. I don't think it is unreasonable
5 for Mr. DeMocker to have thought it was not a bad idea to
6 have some self-protection, particularly during the times when
7 Katie was going to be living in that apartment and he was not
8 there. That was the reason that the apartment was rented,
9 for her to have a place to live during the campaign.

10 The suggestion that he is going to be
11 raking leaves, apart from the cynicism of that and the
12 sarcasm attached to that, just isn't true. He has the
13 ability to earn something, and he has the ability to help
14 save money by working in his own defense.

15 The journal entry from Charlotte was
16 dated August 17. We've asked for that. We are not sure
17 whether there are other journals or other information, but
18 that was within a couple of days of when the books arrived.
19 Mr. DeMocker was talking openly about, should I just run
20 away? Are they going to arrest me without any evidence? And
21 clearly, the decision was made not to do that.

22 To claim that that is proof positive that
23 he had a plan that he was going to act on is inconsistent
24 with the evidence in this case, Judge. Mr. DeMocker didn't
25 run away. He didn't intend to run away, and he doesn't

1 intend to run away now. The question is what do we need to
2 do, what does the Court have to do to ensure his appearance.

3 I don't think keeping him in jail is the
4 only answer. I think Mr. DeMocker can be released on the
5 conditions that I have proposed. And all of us, even
6 Mr. Ainley, should feel confident that his whereabouts will
7 be monitored and known. There would be a huge disincentive
8 financially for him, because of the devastation on his
9 parents and his family if he were to flee.

10 Most importantly, Mr. DeMocker doesn't
11 want to live the rest of his life with the idea that other
12 people out there think that he ran away because he was
13 guilty. His wouldn't ever in a million years do that to his
14 children or to his elderly parents or to his brothers and
15 sisters or to the other people who care about him.

16 He will stand. He told the police, it is
17 right there in the report, that he is going to stand and
18 fight these charges. He meant it then, and he means it now.
19 That is what he will do.

20 But this is all we can do, Your Honor,
21 within the financial resources of the extended DeMocker
22 family. This is all we can manage, but it is plenty. It is
23 plenty, and it is more than enough to be sure that he will
24 come to court. He has done everything that he needs to do in
25 terms of defending himself that I can imagine, and it is

10 THE COURT: Thank you, Mr. Sears.

14 MR. AINLEY: It is, sir.

22 MR. SEARS: I don't think we are anywhere
23 close to knowing what a trial would look like in this case,
24 Your Honor.

25 We sent Mr. Ainley yesterday a two-page

1 letter asking for supplemental disclosure, a lot of which is
2 just usable materials as opposed to what we were given. CDs
3 that we can open and play, documents that we can read. Those
4 kinds of things. I just have no sense of how long the trial
5 is.

6 My thought would be to set a pretrial
7 out -- if you consider that we are going to file the motion
8 on or before the 24th, and you layered onto that the response
9 and reply time and then set it for argument, maybe we can do
10 a pretrial conference on a day for argument. Maybe even
11 conceivably pick a day to argue that motion now, if the Court
12 is prepared to do that.

13 THE COURT: Might make some sense.

14 MR. SEARS: Yes, we would waive time to get to
15 the pretrial conference for sure.

16 THE COURT: April 21 would seem to be far
17 enough out to get the information, the response, the reply.
18 If I put you on Tuesday, April 21st, if you are available and
19 in town --

20 MR. SEARS: That is fine.

21 THE COURT: -- could we do that, plus have a
22 pretrial conference at that point?

23 MR. AINLEY: Yes, Judge.

24 MR. SEARS: That is fine.

25 THE COURT: It is ordered setting a pretrial

1 conference and argument, if a new motion for probable cause
2 is filed, for Tuesday, April 21st, 2009, at 9:00 a.m. Time
3 is excluded between now and then under Rule 8 with regard to
4 the trial.

5 MR. SEARS: If there is anything that the
6 Court would like from us to supplement the materials or
7 anything else, we would be happy to do it. Just let us know.
8 If you want more information about monitoring or anything
9 else, we can make that available.

10 THE COURT: Thank you. Appreciate that.

11 That motion is under advisement. You can
12 reflect that in the clerk's minutes.

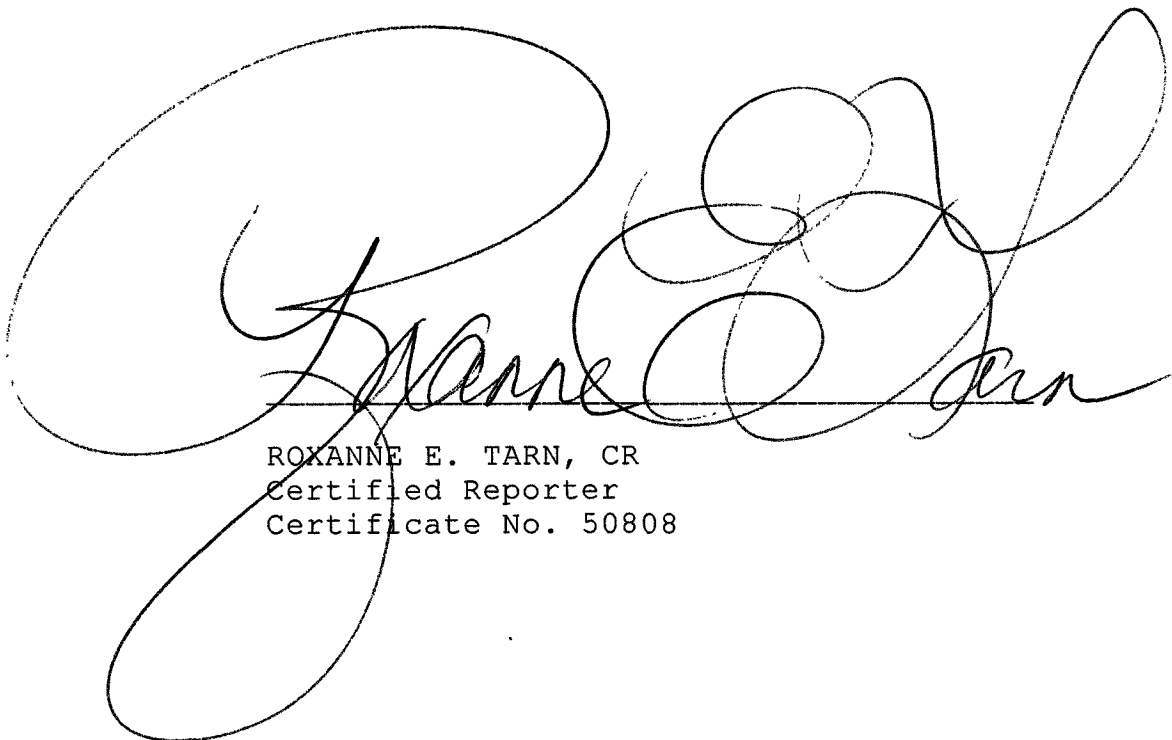
13 Stand in recess.
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C E R T I F I C A T E

I, ROXANNE E. TARN, CR, a Certified Reporter
in the State of Arizona, do hereby certify that the foregoing
pages 1 - 59 constitute a full, true, and accurate transcript
of the proceedings had in the foregoing matter, all done to
the best of my skill and ability.

SIGNED and dated this 22nd day of September,
2010.



ROXANNE E. TARN, CR
Certified Reporter
Certificate No. 50808